



Child Law Practice

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Helping Lawyers Help Kids

ENGAGING FATHERS

Article #4 in a series

Engaging Fathers in the Child Protection Process: The Judicial Role (Part 1)

by Judge Leonard Edwards (ret.)

Noncustodial fathers rarely appear in child protection proceedings.¹ Several reasons stand out: the father is hard to locate, the mother is ambivalent about engaging the father, the caseworker devalues fathers, and the father feels outside the process and does not want to participate. The list goes on.²

As a judge presiding over child protection cases, you have the power to remove barriers and promote fathers' involvement in child welfare legal proceedings. Fathers are important to the child and to the

legal process³ and you play a critical role in engaging them. This article explores:

- why it is important to engage fathers in the child protection process;
- the judge's role in determining who the father is and in establishing paternity;
- the judge's role in monitoring agency actions to identify, locate, notify, and support the father;
- the judge's role in engaging fathers and their families in the child protection process, both in and out of court; and
- safety considerations for the mother and child if the father presents dangers to one or both.

be able to attack the proceedings. The father's "late arrival" in the proceedings can affect the outcome for the child and delay permanency.⁶ Sometimes the child protection process must start over to give the father a fair opportunity to reunify with his child. If the father was never notified of the proceedings, even an adoption could be overturned.⁷

- **Promotes children's social well-being and healthy development.** Research reveals that children have better outcomes when two parents are involved with their

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About this Series

The series gives attorneys and judges tools to better engage nonresident fathers in child welfare cases. Article topics include:

- ✓ Nonresident Fathers' Constitutional Rights (Nov. 08)
- ✓ Representing Nonresident Fathers (Dec. 08)
- ✓ Understanding Male Help-Seeking Behavior (Jan. 08)
- ✓ **Involving Nonresident Fathers: Tips for Judges (this issue)**
- o Engaging Incarcerated Fathers
- o Child Support Issues
- o Ethical Considerations

Making Father Engagement a Priority

Fathers need to be engaged in the lives of their children⁴ unless they pose a threat of harm. In the absence of any risk of harm, judges must take steps to ensure fathers participate in the court process.⁵ Engaging fathers in the child protection case and legal proceedings is important for several reasons:

- **Protects the father's legal rights.** The father has a legal right to participate in the proceedings. If the court process does not include the father, in some states he may

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ABA Child Law PRACTICE

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ABA Child Law Practice (CLP) provides lawyers, judges and other professionals current information to enhance their knowledge and skills, and improve the decisions they make on behalf of children and families. Topics include: abuse and neglect, adoption, foster care, termination of parental rights, juvenile justice, and tort actions involving children and families.

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Director: Howard Davidson

Associate Director: Robert Horowitz

CLP Staff:

Editor & Designer:

Claire Sandt Chiamulera

202/662-1724

chiamulera@staff.abanet.org

Publications/Marketing Director:

Sally Small Inada

202/662-1739

sinada@staff.abanet.org

Case Law Summaries:

Claire Sandt Chiamulera

Scott Trowbridge

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Subscription Inquiries & Address Changes:

Call: Charles Teague, 202/662-1513

E-mail: teaguec@staff.abanet.org

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CASE LAW UPDATE

Father Unable to Establish Liberty Interest in Relationship with Newborn to Overturn Adoption

In re Adoption of A.A.T., 2008 WL 5191468 (Kan.).

The biological father of a newborn child challenged the child's adoption, claiming the mother deceived him about the child's birth and prevented him from forming a meaningful relationship with the child. The trial court ordered DNA testing, which confirmed the father's paternity. After a bench trial, the trial court refused to set aside the adoption. The father appealed.

The case began in New York where the couple met and had sexual relations. When the mother first became pregnant, she told the father of the pregnancy. Soon thereafter, she moved to Kansas and told the father she had had an abortion, allegedly because she knew he would not consent to an adoption. The father expressed doubts about the abortion and questioned the mother's truthfulness. However, he did not act on his doubts.

The mother also deceived others, telling her family members and friends the baby died at birth. She told the adoption agency that handled the adoption that she did not know the father's last name or where he lived. After the child's birth, the mother turned the child over to the adoptive parents, who filed petitions for adoption and termination of the father's parental rights. At that time, the mother gave a false surname for the putative father and said he refused to help during the pregnancy and that she knew nothing about his background.

Notice of the adoption and termination proceedings was published in a New York newspaper, although it listed an incorrect surname for the father that the mother provided. Nothing was done to provide actual notice to the biological father. No father appeared at the proceedings, the father's parental rights were terminated, and the adoption was finalized.

The mother told the biological father the truth six months later, resulting in his action to set aside the adoption. Finding that the adoption agency and the adoptive parents had acted in good faith in the adoption proceeding, the trial court

refused to set aside the adoption. Although the court found the biological father had not abandoned the child during the mother's pregnancy and that he had not learned of the child's birth until after the adoption, it determined that he should have known the mother was still pregnant and that she gave birth, despite her deception. Under the circumstances, the court found the father should have taken steps to determine if the mother actually had an abortion, or was still pregnant and gave birth.

Since the father had not taken steps to protect his parental rights, the court refused his arguments that the adoption decree should be set aside based on newly discovered evidence and failure to notify him of the proceedings. It also rejected his argument that the adoption should be set aside based on the mother's fraud because the mother was not an adverse party. The father appealed.

The Supreme Court of Kansas affirmed. The father argued the adoption decree was void under Kansas statute because he had not been notified of the proceeding. He claimed a constitutionally protected liberty interest in fathering his child that should not have been denied without his consent or compliance with the Kansas Adoption and Relinquishment Act. He also renewed his claim that the mother's fraud prevented him from asserting his interest before the adoption decree was ordered.

In determining if the father had a constitutionally protected liberty interest under the Due Process Clause of the Fourteenth Amendment that entitled him to notice of the proceedings, the court emphasized the importance of an actual parental relationship over a mere biological relationship. Several U.S. Supreme Court cases have established that unwed fathers possess a constitutionally protected liberty interest when they have "grasped the opportunity" to take some responsibility for the child, such as by registering with the putative father registry, participating

in the legal proceedings, and exercising responsibility for the child's care. However, these cases have involved older children and the rights of unwed fathers.

In cases involving newborn adoption, determining if a putative father has grasped his opportunity to parent is left to the states. Despite some differences, states have generally recognized that a putative father has a liberty interest that entitles him to notice of adoption proceedings involving his newborn child if he: (1) diligently took affirmative action that manifested a full commitment to parenting responsibilities and (2) did so during the pregnancy and within a short time after he discovered or reasonably should have discovered the biological mother was pregnant with his child.

The first factor—action to commit to parenting responsibilities—is measured by the father's efforts to financially support the child, legally substantiate his relationship to the child, and provide emotional, financial and other support to the mother during the pregnancy. The second factor—promptness of father's action—is measured by whether the father showed a commitment to the child during the pregnancy within a short time of learning of the child.

The court found the father in this case did not diligently take affirmative action that showed his full commitment to parenting within a short time of learning of the pregnancy. Although he claimed he would have done anything to support the mother during her pregnancy, the court found he failed to show he had assumed any parenting responsibilities, or that he supported the mother financially or otherwise during her pregnancy. He did not explain why he did nothing between the time he first learned of the mother's pregnancy and when she lied to him about the abortion. He also offered no evidence of efforts to locate the mother, confirm the pregnancy, or substantiate his legal rights. Therefore, he failed to show a commitment to parenting that would give rise to a constitutionally protected liberty interest.

The father countered that the mother's fraud should have been weighed when evaluating his ability to show his commitment to fatherhood. State courts that have

considered the issue have held that as long as a state's statutes include a process to permit responsible putative fathers to receive notice of adoption proceedings, the putative father's chance to develop a parenting relationship ends when the newborn child's adoption is finalized, even if the father's failure to demonstrate responsible fatherhood was caused by the mother. This rule is supported by the state's interest in finalizing adoption decrees, providing children stability early in life, guarding the adoption process from controversy, and protecting other parties' privacy interests.

While Kansas and New York had procedures in place to protect the father's interests, the court found that he failed to

pursue them, both during the mother's first trimester and later when he suspected that she was still pregnant. The trial court then proceeded to follow statutory procedures to identify the putative father, not knowing the information the mother gave about the father was false. Since the father did not appear, his rights were terminated and the child's adoption was finalized. In these circumstances, the court found the interests of the state and the adoptive family supported concluding that the father had missed his opportunity to show his commitment to parenting. Therefore he lacked a liberty interest in a relationship with his child and the adoption decree was still valid.

Former Partner Lacked Standing as De Facto Parent to Seek Custody of Partner's Adopted Child

Smith v. Gordon, 2009 WL 243030 (Del.).

An unmarried same-sex couple adopted a child internationally. Because the country where they adopted would not permit two women to adopt the same child, the couple decided that one of the women (parent A) would be the legal adoptive parent. Both women shared the responsibilities and costs of caring for and supporting the child.

After several months, the couple's relationship ended and the nonlegal parent (parent B) moved out of the home. She then petitioned for custody of the child, claiming she was a "legal parent" under the Delaware Uniform Parentage Act, and alternatively that she was a de facto parent, and therefore had standing to petition for custody. The family court held parent B had standing to petition for custody as a de facto parent and granted her legal and physical custody of the child. Parent A appealed.

The Supreme Court of Delaware reversed. Delaware statute provides that custody proceedings may be brought by a *parent*. Someone who is not a parent may petition for and be awarded custody only if the child is dependent or neglected and a family court finds it is not in the child's best interests to be placed in the parent's custody. The child in this case was not dependent or neglected, therefore parent B's standing to petition

for custody of the child depended on her status as a parent.

The family court had determined that parent B was not a legal parent because she was neither the biological nor adoptive mother of the child. Further, she was unable to establish a presumption of maternity, which also would have qualified her as a legal parent, because she had only lived in the same household as the child for 13 months, not the required two years.

The family court did determine, however, that parent B met the requirements for de facto parent status, finding that a psychological (de facto) parent is a parent for purposes of petitioning for child custody.

The Delaware Supreme Court reversed, rejecting the family court's de facto parent determination. The court pointed to 2004 legislation overhauling Delaware's Uniform Parentage Act to reflect key amendments to the Uniform Parentage Act. Those amendments did not include the de facto parent doctrine and defined the parent-child relationship narrowly as the "legal relationship between a child and the parent of the child." Under this statutory scheme, parent B lacked standing as a "parent" to petition for custody of the child.

STATE CASES**Alabama**

J.A. v. Etowah County Dep't of Human Res., 2009 WL 104192 (Ala. Civ. App.). TERMINATION OF PARENTAL RIGHTS, ALTERNATIVES

Trial court properly determined that placement with maternal grandmother was not a viable alternative to termination based on evidence that she would not protect children from sexual abuse; even though child was conceived after grandmother's husband raped her daughter, grandmother was willing to reunite with him when he was released from prison.

T.B. v. DeKalb County Dep't of Human Resources, 2008 WL 5265152 (Ala. Civ. App.). TERMINATION OF PARENTAL RIGHTS, ALTERNATIVES

Trial court erred in finding no viable alternatives to terminating mother's parental rights where evidence showed mother's mental deficiency did not endanger children when father was in the home; child welfare agency should have placed children in foster care until father returned from Guatemala, where he had gone to obtain his visa, instead of concluding that father had abandoned children, terminating parents' rights, and awarding custody to couple who desired to adopt children.

California

In re H.E., 2008 WL 5340972 (Cal. Ct. App.). DEPENDENCY, REMOVAL
In dependency proceeding, removing children from mother's care was necessary to protect them from serious emotional harm where mother routinely made inappropriate charges of sexual abuse against father in front of children, resulting in emotional damage to children and aggressive behaviors by one child towards adults and other children.

Connecticut

In re Justice V., 959 A.2d 1063 (Conn. App. Ct. 2008). TERMINATION OF PARENTAL RIGHTS, REUNIFICATION
Though court failed to make specific orders in dependency hearing regarding steps mother should take toward reunification, this did not preclude termination on abandonment ground where mother did not contact or inquire about child for over a year; even if reasonable efforts were

required under abandonment ground, mother would not have benefitted from a more detailed order as she refused to participate in any planning with the agency.

Florida

A.W. v. Dep't of Children & Families, 2008 WL 4889139 (Fla. Dist. Ct. App.). DEPENDENCY, FEES

Evidence supported dependency finding as to nonresident father's daughter where father failed to assert his possible paternity, abandoned child, did not support or maintain contact with child, and other factors showing a lack of settled purpose to assuming parenting responsibilities.

F.E. v. Dep't of Children & Families, 2009 WL 80429 (Fla. Dist. Ct. App.). VISITATION, DENIAL

Trial court properly refused to give mother visitation with 10-year-old daughter as part of order ending child welfare agency's supervision of child; extensive evidence showed that child had suffered severe physical abuse and her fear of mother would cause severe mental distress if she had any personal contact with mother.

Indiana

In re J.H., 898 N.E.2d 1265 (Ind. Ct. App. 2009). TERMINATION OF PARENTAL RIGHTS, NOTICE

Incomplete notice to father did not violate due process or require overturning termination order where it failed to include the court's address, agency contact information, or time for filing a response; despite lack of compliance with court rule, notice was reasonably calculated to apprise father of the time of the hearing and subject matter given that he was present at same court when hand-delivered the summons, the termination petition was attached, and he could have responded any time before the termination hearing which he attended.

In re N.L.P., 898 N.E.2d 403 (Ind. Ct. App. 2008). CUSTODY, GUARDIAN AD LITEM FEES

Decision in custody case denying full payment of fees to guardian ad litem (GAL) required remand as trial court did not analyze criteria in the Indiana Rules of Professional Conduct and because the GAL performed legal as well as nonlegal activities including supervising visits,

home visits, and preparing GAL reports, which should have been billed separately.

Kentucky

A.P. v. Cabinet for Health & Family Servs., 270 S.W.3d 418 (Ky. Ct. App. 2008). TERMINATION OF PARENTAL RIGHTS, REPRESENTATION

Mother's due process rights were violated when two witnesses were questioned, despite her attorney's absence due to inclement weather; though judge and other attorneys present expressed concerns about proceeding, at no point did anyone ask the mother if she was willing to proceed without counsel.

Louisiana

State v. K.P., 2009 WL 80986 (La. Ct. App.). TERMINATION OF PARENTAL RIGHTS, BEST INTERESTS

Termination of mother's parental rights was in twins' best interests to free them for adoption; twins had been in state's custody for 42 months, mother lacked skills to be good parent and was incapable of placing twins' needs before her needs, twins were doing well and wanted to stay in foster home, and maternal grandparents were not suitable alternative placement.

Maryland

Hayes v. State, 2009 WL 24789 (Md. Ct. Spec. App.). LIABILITY, NEGLECT INVESTIGATION

Allegations that father physically abused stepdaughter during visitation at a grocery store, later proven false in court and administrative reviews, did not give rise to negligence action by father against child welfare agency; statute obligating agency to investigate child abuse and neglect allegations creates a duty to children not alleged abusers.

Mississippi

J.C.N.F. v. Stone County Dep't of Human Servs., 996 So. 2d 762 (Miss. 2008). TERMINATION OF PARENTAL RIGHTS, REPRESENTATION

Court's refusal to appoint attorney for indigent mother in termination hearing did not violate due process as trial did not involve complicated issues of law or expert testimony; result would have been the same if mother had an attorney since there was uncontroverted evidence that children had been in custody for statutory time period and mother had failed to meet many of the reunification goals.

New Jersey

Div. of Youth & Family Servs. v. R.P., 2008 WL 4820809 (N.J. Super. Ct. App. Div.). TERMINATION OF PARENTAL RIGHTS, FAILURE TO IMPROVE

Trial court properly found clear and convincing evidence warranting termination of parental rights of parents after their children were removed due to drug-related activities; during the time the children were in custody, both parents had been incarcerated, failed to complete substance abuse treatment, and did not regularly visit children.

New York

In re Daniel D., 2008 WL 5396707 (N.Y. App. Div.). DEPENDENCY, EMOTIONAL ABUSE

Trial court properly found father emotionally abused his children by encouraging them to make false allegations against their grandfather in dependency proceeding; the allegations, made in apparent attempt to alienate children from their mother, subjected children to unnecessary and distressing medical exams and interviews.

In re D.M., 2009 WL 159778 (N.Y. Fam. Ct.). CONFIDENTIALITY, E-MAIL RECORDS

In harassment case where mother alleged father sent vulgar e-mails to her, father was required to provide consent to e-mail service provider to release e-mail records; there is no special confidentiality rule requiring a showing that the information in the e-mail records could not be obtained from another source, but consent could be limited to e-mail account holder's identity and e-mails sent from that account to mother.

In re Jose Q., 2009 WL 88606 (N.Y. App. Div.). TERMINATION OF PARENTAL RIGHTS, REASONABLE EFFORTS

In proceeding to adjudicate child as permanently neglected and terminate incarcerated father's parental rights, child welfare agency was not required to show it made reasonable efforts to strengthen parent-child relationship since father failed several times to cooperate with agency's efforts to help him plan for child's future and its efforts to arrange visits.

North Carolina

In re S.N., 669 S.E.2d 55 (N.C. Ct. App. 2008). TERMINATION OF PARENTAL RIGHTS, FAILURE TO IMPROVE
Mother's failure to address issues that led to children's removal supported decision to terminate her parental rights despite her argument that she made limited progress; mother's efforts to regain custody of children only began once her rights to custody were threatened.

In re T.H.T., 2008 WL 3915190 (N.C.). DEPENDENCY, DELAYS

Where mother appealed refusal of trial court to hold a hearing to determine cause of delay in receiving a written adjudication and disposition order three months after the hearing, the proper remedy was mandamus rather than new hearing because mother did not challenge the underlying order but its lack of timeliness; order for a new hearing would only further delay the case.

Ohio

In re A.F., 2009 WL 187959 (Ohio Ct. App.). DEPENDENCY, RELATIVE PLACEMENT

Trial court properly found grant of legal custody to maternal grandmother, rather than to foster parents, was in child's best interest in dependency case; though child lived with foster parents for over three years while the agency attempted reunification with mother, grandmother had preference as a relative and consistently visited children, both homes were found to be appropriate, child was strongly bonded to grandmother, and siblings lived with the grandmother.

Oregon

In re N.R.E.T., 2008 WL 4791831 (Or. Ct. App.). TERMINATION OF PARENTAL RIGHTS, FITNESS

Father's dependence on several drugs, in combination with his domestic violence, represented conduct that was seriously detrimental to child to support finding of unfitness for purposes of terminating his parental rights; father had not yet completed drug treatment needed to provide degree of certainty that he would be able to maintain recovery and he had not participated in any treatment for domestic violence.

Texas

In re C.M.C., 2008 WL 5244929 (Tex. App.). TERMINATION OF PARENTAL RIGHTS, PUTATIVE FATHERS
Alleged father was entitled to proceed in termination of parental rights trial since he had admitted his paternity by contacting child welfare agency after mother identified him and filed answer and sworn affidavit in court identifying himself as the father; agency was required to prove father engaged in conduct that warranted termination of his rights and that termination was in children's best interests.

Virginia

In re D.M.F., 2008 WL 5194296 (Tex. App.). TERMINATION OF PARENTAL RIGHTS, ABANDONMENT

Evidence did not support finding that father abandoned mother during her pregnancy and through child's birth to support terminating his parental rights; father's paternity was not established until after petition was filed, so he was not a parent as a matter of law during mother's pregnancy, he never had custody of child, and child was removed at birth because of mother's alleged mental condition.

Mabe v. Wythe County Dep't of Soc. Servs., 2009 WL 166932 (Va. Ct. App.). TERMINATION OF PARENTAL RIGHTS, CONTINUANCES

Mother, who was a prisoner in federal custody, was prejudiced when trial court denied six-day continuance to allow enough time for federal authorities to transport her to termination of parental rights hearing and required remand for new hearing; prejudice resulted when mother was prevented from participating in proceeding that made her a legal stranger to her children.

FEDERAL CASES

S.D. Ohio

Wilson v. Columbus Bd. of Educ., 2008 WL 5179896 (S.D. Ohio). LIABILITY, SCHOOLS

Summary judgment was inappropriate where vice principal allegedly suspected child was being sexually abused, did not report the abuse, and suspended the child for other disciplinary issues, placing her at home during the day where she was raped by her stepfather; based on the allegations, jury could find vice principal liable for increasing risk of harm to child.

Barriers to Engaging Fathers

Understanding why fathers are important in child protection cases is the first step to fully engaging them in the legal process. If the child protection system does not have a role for fathers, then developing engagement strategies wastes time. Common barriers to engaging fathers are:

Mothers' reluctance to reveal the name or location of the father.

Many mothers have had violent or unhealthy episodes with the father. Others have a new romantic relationship and want to forget about their child's biological father. Some may want to protect him from involvement with the court.¹ Still others are reluctant to bring the current abuse or neglect episode to the attention of the father, fearing he will ask for custody.²

Caseworkers' ambivalence about finding fathers.³ Some caseworkers have had negative experiences with fathers and suspect that the father is not interested in the child. Others fear that bringing the father into the child protection case may introduce another abusive person or increase conflict between the parents.⁴ Caseworkers know that engaging fathers will result in more work, will be more costly to the agency, and find that working with mothers alone is easier.⁵

Legal system's failure to place high priority on locating or engaging fathers, particularly if the father is not married to the mother, is incarcerated, or has a violent or criminal history.⁶

For further discussion of barriers to father engagement, see the third article in this series, "Reaching Nonresident Fathers in the Child Welfare System: Understanding Male Help-Seeking Behaviors," by Mark Kiselica, in the January 2009 *CLP*.

Sources:

¹ See, e.g., *G.P. v Florida*, 842 So. 2d. 1059 (Fla. Dist. Ct. App. 2003) (holding mother had a constitutional privacy right to withhold name of her child's father).

² Harris, L. "Involving Nonresident Fathers in Dependency Cases: New Efforts, New Problems, New Solutions." *Journal of Law & Family Studies* 9(2), 2007, 299-397.

³ Malm, K., J. Murray & R. Geen. *What About The Dads? Child Welfare Agencies' Efforts to Identify, Locate and Involve Nonresident Fathers*. Washington, D.C.: U.S. Department of Health and Human Services, Office of the Assistant Secretary of Planning and Evaluation, 2006, ix, 85-86.

⁴ *Ibid.*, 25.

⁵ See Rosenberg, J. & W.B. Wilcox. *The Importance of Fathers in the Healthy Development of Children*. Washington, DC: U.S. Department of Health & Human Services, 2006, 33.

⁶ National Child Welfare Resource Center for Family-Centered Practice. "Father Involvement in Child Welfare: Estrangement and Reconciliation." Washington, D.C.: U.S. Department of Health and Human Services, ACYF, Children's Bureau, Summer 2002, 1-2.

(Continued from page 1)

upbringing.⁸ A father's presence can give the child a sense of belonging to a complete family. A father can help the child understand who he is and how he fits into the social scheme of his family and the world around him.

■ **Promotes family connections.**

The father's family provides an additional resource for the child socially, emotionally, and financially. The father's family, on average, will provide the child with one-half of her relatives. Studies show that this can mean scores if not hundreds of potential relative connections.⁹

- **Provides financial resources for the child.** A father can bring financial support directly or through child support to the caretaker.¹⁰ The father may also provide health and dental insurance. The father's extended family also offers opportunities for economic support.

Identifying Fathers and Determining Paternity

The father is often viewed as the male biological parent of a child. But whether he will be acknowledged by the law as a father entitled to the legal rights and protections given to the mother will be determined by other factors such as:

- Was he married to the mother at the time of conception?
- If not, did he acknowledge that he is the father of the child? When did he do so?
- Was he present at the birth of the child?
- Did he acknowledge paternity at the hospital or place his name on the birth certificate?
- Did he live with and support the child after birth?
- Did he attempt to have contact with and support the child after birth? Was he prevented from doing so?
- Is there more than one person claiming to be the father?
- Did he register on a paternity registry?

Depending on state law and answers to the above questions, biological fathers in some jurisdictions may find they have fewer rights than in others. It is your role to sort this out and declare who the father is and his legal status regarding the child before the court. Accomplishing this involves aggressively pursuing paternity from the outset of the case.¹¹

Questioning the caseworker

Sometimes the information collected by the caseworker before the initial hearing will be incomplete regarding the identity, location, and legal status of the father. Always ask the caseworker whether she has had contact with anyone claiming to be the father of the child. If so, follow-up by asking if the caseworker offered paternity testing and informed him of the court proceedings and his right to participate.

Questioning the mother

Obtain as much information from the mother as possible by questioning her under oath. When trying to identify and locate a father with a reluctant mother, you will need to ask probing questions (e.g., marriage status, father's name, where mother met father, father's awareness of child, father's presence at child's birth, fathers relatives). (See box, "Questioning the Reluctant Mother," p. 8) Your stature as the judge is such that answers are likely to be forthcoming, answers that may not be revealed to a caseworker or even to an attorney. It takes extra time for judicial questioning, but the results are well worth it.

Ordering agency follow up

Order the agency to follow up on the information disclosed by the mother, search for the father and give him notice of the proceedings. Follow up on the agency's progress at subsequent hearings.

Questioning potential fathers directly

Sometimes a man claiming to be the father will appear at the courthouse. Be sure the person responsible for bringing parties into the courtroom (e.g., bailiff or other court officer) informs you of all parties who wish to be present in the courtroom. Decide who will be permitted to be present and for what portion of proceedings. Question a potential

father directly about his relationship to the mother, relationship to the child, desire to be a father, and his efforts to establish a relationship with child. If the man may be the father, take steps to protect his rights, such as by ordering the agency to arrange and pay for paternity testing; setting a date for paternity test results; and appointing counsel.

Protecting the legal rights of alleged fathers

Unfortunately, some state statutes create obstacles for nonresident fathers including those who might be interested in connecting with their children and participating in child protection proceedings. These statutes may require the father to file a legal action to determine his paternity, register in a paternity registry, or take other independent action to have the right to receive notice and participate in the proceedings.¹²

One troubling situation involves a man the mother claims is the father to whom she is not married and who otherwise would not qualify as a pu-

children are born out of wedlock,¹⁶ and many children in child protective proceedings come from unmarried parents. These children did not choose their parents or their parents' marital status. To punish them for their parents' behaviors is wrong. It is also unconstitutional.¹⁷ These children deserve the same level of advocacy and assistance in connecting to and reunifying with family as children of married parents.

The father who appears and asks for custody raises complex issues. Assuming that he is a fit parent, should the court place the child with him and dismiss the case? That would be the result had the mother died since he would be the child's surviving parent. Should the court give no preference to the father at all and simply use a "best interests" test to determine custody? Should the court place the child with the father, maintain the child under court supervision, and thus give the mother an opportunity to use services to reunify with her child? States have responded to these issues in different ways both through statutes and appellate decisions.¹⁸

Question a potential father directly about his relationship to the mother, relationship to child, desire to be a father, and his efforts to establish a relationship with child.

tative or presumed father under the Uniform Parentage Act.¹³ In many states this person is called an alleged father. Best practice is for the court to order that he be notified of the proceedings. In some jurisdictions, the court will immediately appoint counsel to represent him and help locate and advise him of his rights.¹⁴ Most states will not appoint counsel unless paternity is established, while some states rarely or never appoint counsel for a father or mother at any stage of the proceedings.¹⁵

Devote time to determining whether an alleged father is the biological father of the child. Many

Monitoring Agency Actions

Do not assume the child welfare agency is doing all it can to identify, locate, notify, and support the father in child protection proceedings. The Adoption Assistance and Child Welfare Act of 1980¹⁹ requires court oversight of agency actions in child protection cases. Further, the Child and Family Service Reviews (CFSRs) assess each child welfare agency on (1) whether they made concerted efforts to involve *parents* in the case planning process on an ongoing basis; (2) whether the caseworker had frequent and high quality meetings with the *parents*;

Questioning the Reluctant Mother

Consider the following courtroom exchange involving efforts to identify and locate the father from a reluctant mother. Such courtroom exchanges help identify and locate fathers and promote their involvement in court proceedings.

Judge: Good morning Ms. Jones. Thank you for coming to court today. As you know we are here today regarding the legal proceedings involving your child. I have several questions I must ask you at the outset. They are required by law. They are so important that I am going to ask you to raise your right hand and give an oath that you will tell the truth (the oath is given). First, are you married?

Mother: No.

Judge: Have you ever been married?

Mother: Yes, but I think we are divorced. At least, he said he was going to get a divorce. I haven't seen him for years.

Judge: What is that person's name?

Mother: Jack Williams.

Judge: How can we contact him?

Mother: I have his address because the child support people have been getting him to pay support for the past few months.

Judge: Will you please give that information to the social worker after court?¹

Mother: Alright.

Judge: Who is the father of your newborn son, Charlie?

Mother: I don't know.

Judge: Ms Jones, it is necessary that I know who the father is. These are important legal proceedings and you must answer my questions. Who is Charlie's father?

Mother: I only met him once.

Judge: Where did you meet him?

Mother: In a bar.

Judge: What is the name of the bar?

Mother: I forget.

Judge: Where is the bar?

Mother: It's on the corner of 4th and Washington, downtown.

Judge: What did you call him when you met him?

Mother: He just went by "Big Al."

Judge: Did you see him there more than once?

Mother: Yea, he hangs out there.

Judge: Did he say where he worked?

Mother: No.

Judge: Did he say where he lived?

Mother: No.

Judge: Have you seen him lately?

Mother: Once in a while.

Judge: Have you told him about Charlie?

Mother: I may have told him.

Judge: Was he present at the birth of the baby?

Mother: No way!!

Judge: Has he ever seen the baby?

Mother: No way, I wouldn't let him near the baby.

Judge: Did he ever see you when you were pregnant?

Mother: I don't remember.

Judge: Did he ever talk about his family?

Mother: I don't remember.

Judge: Ms. Jones...this is very important. Did he tell you about his family?

Mother: He said he lived with his mother and aunt.

Judge: Could you show the social worker or your attorney where the bar is?

Mother: I guess so.

Judge: Could you point out Big Al to them if you saw him?

Mother: I guess so, but you have to watch out, as I hear he is dangerous.

Judge: Thank you, Ms. Jones. Ms. Tompkins (the social worker), did you hear the answers that Ms. Jones gave? I order you to follow up on that information. Moreover, I order you to continue this search as long as this child's case is before the court.

¹ This follow-up by the social worker is important. If the divorce was never finalized (and often it has not been), this man is the father of the child since he and she were married at the time of the conception and birth. However, biologically someone else is the father of the child. If the husband can be found, he is entitled to notice. Usually, he tells the social worker or comes to court and states he is not the father and does not want any involvement in the case.

and (3) whether the caseworker demonstrated concerted efforts to provide visits of sufficient quantity and quality to promote continuity in the child's relationship with the parents and siblings²⁰ (emphasis added). The CFSR assessments require the caseworker to work with both parents throughout the time a child's case is before the court. These federal laws and guidelines clarify the agency's responsibilities and the court's role in monitoring agency compliance. Within the context of each case, the court can specify what it expects of the agency and hold it accountable.²¹

Assessing the agency's actions

At the shelter care hearing,²² ask what actions the agency has taken to identify and locate the father.²³ Has the agency's caseworker:

- asked the mother about the identity and location of the father?
- used any search technology such as the child support locator to locate the father?
- asked the mother's relatives about the father and his relatives?
- asked the mother about the identity and location of any of the father's relatives?
- used family-finding technology to identify the father's relatives?²⁴
- contacted any of the father's relatives concerning his location?
- checked with local jail or state prison representatives (or prisoner locator Web sites) to determine if the father is incarcerated? (See "Locating Your Client: A Checklist" in Andrew Cohen's article, "Representing Nonresident Fathers in Dependency Cases," *ABA Child Law Practice*, Dec. 2008, p. 151.)
- checked with probation or parole authorities to determine if the father is on probation or parole?

- talked with the child or the child's siblings about contact with the father or father's relatives?

At interim review hearings, address the caseworker's efforts to identify and locate the father and review relevant court reports. If the caseworker has failed to follow through, consider making a finding of "no reasonable efforts" since identifying the father can prevent foster care placements.²⁵

Ensuring the father is notified

Notifying the father that legal proceedings have commenced is another critical stage in child protection cases. State statutes differ on the type of notice required before the court can proceed. Some states do not require the state (agency) to give an unmarried father notice of child protection proceedings, or only require notice when that person has taken specific steps such as entering his name in a paternity registry.²⁶

Illinois, on the other hand, includes unmarried fathers in the definition of parent and requires personal service when the case starts.²⁷ Notifying the father is so important that Illinois gives him the right to demand a shelter care rehearing when he finally appears.²⁸ Only after extensive efforts can the agency use substituted service, namely publication, to notify the father.²⁹ This commitment to engaging the father is a best practice that other state legislatures should emulate.

Ordering DNA testing to establish paternity

When ordering DNA or other testing to determine paternity, make your expectations known regarding payment for the test, the Title IV-D agency or the child welfare agency, depending on which can accomplish the DNA testing more quickly or at the lowest cost. These are issues that impact the child's best interests as well as the timeliness of the court process, already under strict ASFA

guidelines. If there is any question about the agency's follow through, hold an interim review to check on the progress of the testing.

Ensuring visits begin once paternity is established

Once paternity is established, visitation should begin immediately unless there is reason to believe such contact would harm the child.³⁰ The agency should not wait for weeks or months to return to court to start visits. Ensure visits begin promptly by making an order for visitation contingent upon the paternity finding without requiring a return to court. The agency should also consider permitting the father's relatives to participate with the father in visits. His relatives may be important in helping the father develop a positive relationship with his child.

Ensuring the agency provides services to the father

Make it clear that you expect the agency to offer the father services once paternity is established. Since some fathers ask for service referrals before paternity is determined, encourage the agency to permit this to occur without requiring a return to court.

Part 2 will appear in next month's issue of CLP.

Judge Leonard Edwards is a retired superior court judge from Santa Clara County, California. He has 26 years of experience as a judge, primarily in juvenile court, and has presided over thousands of child protection cases. Through this work, he has concluded that fathers are important to the child and to the legal process and that juvenile court judges can play a key role engaging fathers in the child protection process.

Endnotes

¹ "Child protection proceedings" is used in this

article to refer to legal proceedings brought on behalf of allegedly abused, neglected, or abandoned children. The infrequency of father's involvement has been noted in Malm, K., J. Murray and R. Geen. *What About The Dads? Child Welfare Agencies' Efforts to Identify, Locate and Involve Nonresident Fathers*. Washington, D.C.: U.S. Department of Health and Human Services, Office of the Assistant Secretary of Planning and Evaluation, 2006, vii – xiii.

² Supporting documentation on file with the author.

³ National Child Welfare Resource Center for Family-Centered Practice. "Father Involvement in Child Welfare: Estrangement and Reconciliation." *Best Practice/Next Practice*, Summer 2002, 1-2.

⁴ U.S. Commission on Child and Family Welfare. *Parenting Our Children: In the Best Interest of the Nation, A Report to the President and Congress*, Sept. 1996, 1; Green, A. "Policy and Practice Reform to Engage Non-Resident Fathers in Child Welfare Proceedings (Part 1)." *Child CourtWorks* 10(5), Aug. 2008; Popenoe, D. "Life Without Father." In *Lost Fathers*, edited by Daniels, C. New York, NY: St. Martin's Griffin, 1998, 33-49; McClanahan, S. "Growing Up Without Father." In *Lost Fathers*, edited by Daniels, C. New York, NY: St. Martin's Griffin, 1998, 87-108.

⁵ "Putative fathers must be located and brought into court process as quickly as possible." *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*. Reno, NV: National Council of Juvenile & Family Court Judges (NCJFCJ), 2000, 10.

⁶ "Timely resolution of paternity issues is both in the best interests of the child and essential to avoiding delays at subsequent points in the court process." NCJFCJ, *Adoption Guidelines*, 2000, 10.

⁷ E.g., *State ex rel. DHS v. Rardin*, 134 P.3d 940 (Or. 2006); *In re Shaiesha O.*, 887 A.2d 415 (Conn. App. Ct. 2006); *In re Deztiny C.*, 723 N.W.2d 652 (Neb. Ct. App. 2006); *In re Dylan Z.*, 697 N.W.2d 707 (Neb. Ct. App. 2005).

⁸ Parke, M. "Are Married Parents Really Better for Children? What Research Says about the Effects of Family Structure on Child Well-Being." Washington, DC: Center for Law and Social Policy, 2003; McLanahan, S. & G. Sandefur. *Growing Up with a Single Parent: What Hurts, What Helps*. Cambridge, MA: Harvard Univ. Press, 1994.

⁹ Edwards, L. & I. Sagatun-Edwards. "The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families." *Juvenile & Family Court Journal* 58(1), Winter 2007, 8-9; Beck, K. et al. "Finding Family Connections for Foster Youth." *ABA Child Law Practice* 27(8), October 2008, 113-125.

¹⁰ Children living without fathers are five times more likely to be poor. U.S. Census Bureau, *Children's Living Arrangements and Characteristics*: March 2002, P20-547, Table C3. Washington, D.C.: Government Printing

Plan to Attend: Two ABA Child Welfare Conferences

First National Parents' Attorneys Conference

May 13-14, 2009

The 2009 National Conference on Children and the Law

May 15-16, 2009

Both conferences to be held in Washington, DC.

Sponsored by the ABA Center on Children and the Law

Register and learn more by visiting: www.abanet.org/child

Office, 2003.

¹¹ Some states require the paternity enquiry at the initial hearing. See Cal. Welf. & Inst. Code § 316.2(a) and Cal. Rule of Court 1413(b). This is a best practice since it focuses upon a critical issue at the earliest court hearing. See also Edwards, L. "Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process" *Juvenile and Family Court Journal* 58(2), Spring 2007.

¹² See generally Iowa Code § 232.91(1); S.D. Codified Laws § 25-6-1.1; Va. Code Ann. § 16.1-277.01 B4; Fla. Stat. Ann. § 63.062; Idaho Code Ann. § 16-1505 (2) et seq.

¹³ Uniform Parentage Act, available at www.nccusl.org.

¹⁴ D.C. Code § 16-2304.

¹⁵ In Nevada, indigent parents do not have a legal right to representation, so only have representation in a few circumstances where the judge orders it. This is also true in Indiana. In Minnesota, as of the date of this article, the Office of Public Defender has stopped representing parents so there are no state-funded attorneys for indigent parents in the child protection system.

¹⁶ The National Center for Health Statistics reports that 36.9% of all births in the United States in 2005 were to unmarried mothers, another all-time high. <www.cdc.gov/nchs/fastats/birth/htm>

¹⁷ See, e.g., *Pickett v Brown*, 462 U.S. 1, 7 (1983) ("...imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing...the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth"); *Gomez v Perez*, 409 U.S. 535, 538 (1973) ("a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally.")

¹⁸ For a discussion of these issues, cases and statutes, see Harris, L. "Involving Nonresident Fathers in Dependency Cases: New Efforts, New Problems, New Solutions." *Journal of Law & Family Studies* 9(2), 2007, 301-307. Also see Sankaran, Vivek. "Advocating for the Constitutional Rights of Nonresident Fathers." *ABA Child Law Practice* 27(9), Nov. 2008, 129.

¹⁹ The Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, 42 U.S.C. § 670 et seq.

²⁰ Items 13, 18 and 20, Child and Family Service Review. The CFSR results from almost every state has been disappointing in all of these measures.

²¹ "The court must ensure that the efforts of the child welfare agency are thorough and diligent in locating and involving all legal and putative fathers." NCJFCJ, *Adoption Guidelines*, 2000, 10.

²² This article uses "shelter care hearing" to refer to the first hearing in a child protection case.

²³ In some states, failure to conduct a thorough investigation can result in reversal of a termination of parental rights decision. See *In re S.P.*, 672 N.W.2d 842, 848 (Iowa 2003) ("For example, the investigator did not talk to the children or their caretaker, Scott, or to the children's mother.").

²⁴ "Family finding" emphasizes the importance of family members as a solution to the problems facing abused and neglected children. See Edwards, "Achieving Timely Permanency," 2007, 8; Beck et al., October 2008.

²⁵ On the use of the "no reasonable efforts" finding, see Edwards, L. "Improving Implementation of the Adoption and Child Welfare Act of 1980." *Juvenile and Family Court Journal* 45(3), 1994, 19-23; Edwards, L. "Reasonable Efforts: A Judicial Perspective." *The Judge's Page*, July 2008, available at www.Nationalcaso.org

²⁶ *State v. Corrigan*, 600 S.W.2d 87 (Mo. Ct. App. 1980); Minn. Stat. Ann. § 259.49, subd. 1; Iowa Code § 232.91(1). Iowa's restrictive statute has not prevented Iowa judges from taking a more proactive attitude towards the identification, notice, and engagement of nonresident fathers in child protection cases, however.

²⁷ 705 Ill. Comp. Stat. 405 1-3 (11); 405 1-5(1); 405 1-5(1.5); 405 2-10(3); Nolan, L. "Preventing Fatherlessness Through Adoption While Protecting the Parental Rights of Unwed Fathers: How Effective Are Paternity Registries?" *Whittier Journal of Child and Family Advocacy* 4, Spring 2005, 289-322 (noting that fathers do not know about the registry and that registries are ineffective in interstate adoptions).

²⁸ 705 Ill. Comp. Stat. 405 2-10(4).

²⁹ 705 Ill. Comp. Stat. 405 2-15, 2-16.

³⁰ The social worker must make the court aware of facts that might lead it to conclude that visits would harm the child.

Improving Child Welfare Practice in Rural Communities

by Claire Chiamulera

At a recent teleconference sponsored by the National Resource Center for Organizational Improvement, presenters from projects aimed at improving child welfare practice in rural communities shared the following tips:

Focus on community strengths.

Rural communities are often viewed from a deficit perspective (“They’re out in the sticks.” “They don’t have the resources that urban areas do.”). Turn this around and see the positive aspects within the community. Common strengths are:

- Rural communities are very resourceful and creative and are able to draw on existing resources to solve problems (e.g., in one small town, a bus driver played a case management role, ensuring the parties got where they needed to be).
- People in rural areas often rely on informal resources (e.g., neighbor helping neighbor) and tend to act on their intuition (what feels right) to solve problems.
- People in rural areas share a strong bond and share a sense of place, climate, culture, spirituality and customs. They are great collaborators and will do what it takes to help one another out. Close-knit kin and family networks often pull together to keep families together or raise a child.

Value relationships. Relationships are at the heart of practice in rural areas. Strong interpersonal skills and the ability to develop relationships are critical. Understand where the people you work with are coming from. Be diplomatic and patient when first getting to know new people. Take time to understand their values, beliefs, and agendas before rushing in with your own.

Understand relationship levels.

People living in rural communities are often related to others in the community in many ways. For example, a child welfare caseworker may have to remove the child of a relative for suspected abuse. Or, the plumber who’s called to repair the sink may have been involved with supervised visits through child protective services a year earlier. How you handle these multiple interdependent relationship levels requires delicate balancing and professionalism. Always handle yourself with accountability, compassion, and integrity at every step of the way to prevent complications.

Reach out to build trust. Trust building is key to relationship building. Meet clients where they are. Don’t expect them to come to you. See the community you’re serving firsthand—where clients live, the roads they must drive, where service providers are located, and what resources exist (or not). Be transparent about what you are doing and clearly state your intentions. Always follow through on your commitments to clients. Trust comes with the efforts you make.

Recognize cultural and class issues.

There is a tendency to think of urban areas as more diverse and rural areas as monocultural. This is not necessarily true. Rural communities are increasingly diverse and class and culture affect child welfare in many ways. Identify a community’s unique values and customs and try to incorporate them when working with rural families. For example, when working with a rural tribal community, include tribal customs, such as starting a meeting with a tribal blessing, honoring a tribal elder, or using a talking circle to close a meeting.

Be aware of biases and attitudes.

Attitudes and biases relating to class and culture can affect how community members view one another. For example sometimes people make assumptions and don’t take time to look at a family’s strengths (e.g., a child is viewed as “at risk” because he comes from the “Jones family” on the wrong side of the tracks). Or, the other extreme, people may assume there are no problems in a “fine-upstanding family” and turn their heads to suspected abuse. It’s important to overcome class stereotypes in rural communities so all children are safe.

Understand the culture of self-reliance. A culture of self-reliance is common in rural communities and can be a barrier to seeking help. “We can do it ourselves.” “We’ve made it ourselves and don’t need outside help.” These are common beliefs among rural people. Engagement and trust building is key to breaking these belief patterns so families will be open to getting the help they need.

Claire Chiamulera is CLP’s editor.

These tips are based on presentations at the NRCOI Teleconference, “Training to Improve Practice in Rural Areas: Innovative Strategies and Resources,” February 12, 2009. Presenters included: Katherine Cahn, executive director, Center for Improvement of Child and Family Services/Child Welfare Partnership, Portland State University School of Social Work; Margaret Orrantia, Tribal STAR assistant coordinator, School of Social Work, San Diego University; and Christine Howell, project coordinator, Rural Success Project, UNC-CH School of Social Work.

- To listen to a recording of the teleconference, visit www.nrcoi.org.
- To learn more about these and other rural child welfare improvement projects, visit www.childwelfare.gov/systemwide/funding/overview/rural.cfm

What Passage of CHIPRA Means for Child Advocates

by Eva J. Klain

Recognizing the importance of children's health, on February 4, 2009, President Obama signed into law the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, P.L. 111-3. CHIPRA extends and expands the State Children's Health Insurance Program (SCHIP), formerly called SCHIP.

Originally enacted in 1997 with bipartisan support, SCHIP targeted low-income children, defined as uninsured children under age 19 in families with incomes at or below 200 percent of the federal poverty guidelines. Funded at nearly \$40 billion over 10 years, the program was up for reauthorization in 2007 and has been operating under an interim program extension set to expire in March 2009. Congress passed two versions of the SCHIP reauthorization that were vetoed by President Bush in 2007.

CHIPRA reauthorizes the Children's Health Insurance Program (CHIP) through 2013 at increased levels of funding with the intent of covering an additional 4 million currently uninsured children. It is expected to cost \$32.8 billion, which will be funded with an increase in the federal tobacco tax. CHIPRA's provisions take effect April 1, 2009, even if related regulations have not been finalized.

Key CHIPRA Provisions

Many of CHIPRA's provisions aim to increase the number of children able to access health services they otherwise could not afford. Under CHIP, the federal government matches state spending at an enhanced rate compared to Medicaid (70% compared to 57% nationally on average, with variations among states). However, each state receives a capped allotment under CHIP so that no entitlement to services exists for individual eligible children.

Increased Coverage: The Congressional Budget Office estimates that an additional 4.1 million children will be covered under CHIP and Medicaid through CHIPRA. This includes 3.4 million uninsured children who are currently eligible for coverage as well as .7 million children brought in by expanding CHIP to new populations. States can set their own eligibility levels, but they will receive the Medicaid match rate rather than the CHIP enhanced match for expansions to children with family incomes above 300% of the federal poverty guidelines.

CHIPRA also provides financial incentives for states to increase enrollment of eligible low-income children in Medicaid. States could receive a bonus per child based on how much actual enrollment exceeds target levels set by CHIPRA. States must also make efforts to simplify the eligibility process to receive the bonuses. These may include eliminating the asset test, using a joint application for Medicaid and CHIP, streamlining renewal, or allowing presumptive eligibility, among others.

Dental Health: Recognizing that children's oral health is integral to their overall health and should receive greater attention, CHIPRA requires states to include dental services in CHIP plans. It also gives states the option to provide dental-only supplemental coverage to children who would qualify for CHIP but have other health insur-

ance that does not include dental benefits.

- If your client is already enrolled in CHIP, ensure caretakers use the dental services benefits to obtain regular oral health care.
- Determine whether your child client may qualify for dental-only supplemental coverage.

CHIPRA also includes provisions about developing and disseminating oral health educational materials, data reporting on dental care access and quality, and posting lists of participating dental providers.

Mental Health: While CHIPRA does not require states to include mental health or substance abuse services in their CHIP plans, if a state chooses to do so, the Act requires mental health parity. That is, the state must offer the same benefits for mental health or substance abuse treatment as it does for surgical or medical care.

Coverage for Legal Immigrants: CHIPRA allows states the option to permit legal immigrant children and pregnant women to enroll in Medicaid and CHIP. Previously, legal immigrant children and pregnant women were required to wait five years before becoming eligible. Undocumented immigrants, however, continue to be ineligible for Medicaid or CHIP.

In addition, the citizenship documentation requirements for Medicaid will now apply for children in CHIP. However, in response to advocates' claims that these requirements deterred some legal, qualified families from enrolling, CHIPRA allows states to satisfy these requirements for both Medicaid and CHIP by using a name and social security number matching process with the Social Security Administration.

Pregnant Women: CHIPRA gives states the option to cover targeted low-income pregnant women through a state plan amendment when certain conditions are met, including that the state has established an income eligibility level of at least 185% of the federal poverty guidelines for pregnant women under Medicaid and a minimum income eligibility level of 200% of the federal poverty guidelines for children under CHIP.

Childless Adults: CHIPRA provides a phase-out of CHIP coverage for nonpregnant childless adults; however, states can opt to apply for a Medicaid waiver to continue coverage for such adults under certain circumstances. This provision may have implications for youth transitioning out of foster care.

- Advocates should work with the child welfare agency and their clients to determine whether youth transitioning out of foster remain eligible for continued coverage.

Parents: CHIPRA requires a phase-out of coverage for parents of children enrolled in CHIP. It also prohibits the approval of new waivers to provide coverage to parents.

Outreach, Enrollment and Reduced Barriers to Enrollment: The Act includes a national enrollment campaign and grants for outreach and enrollment efforts to increase the number of children covered under the program. It allows payments under CHIP and Medicaid for translation and interpretation services and increases outreach to increase enrollment of Native Americans. Complementing these efforts are provisions to reduce enrollment barriers by requiring state CHIP plans to describe procedures that reduce administrative barriers. States must also show efforts to assure continuity of

coverage by coordinating enrollment, retention and coverage of children who frequently change their state of residency or otherwise are temporarily located outside their state of residency.

- Advocates should pursue continuity of coverage for their child clients whose placements may temporarily take them out of state.

Medicaid and CHIP Coverage for Children in Foster Care

Medicaid remains the country's primary health coverage program for low-income children. All children in foster care for whom a state receives federal reimbursement under title IV-E of the Social Security Act and those who receive federally reimbursed adoption subsidies are eligible for Medicaid. At their option, states have also chosen to extend Medicaid benefits to non-IV-E eligible children, and all states but one extend Medicaid coverage to adopted children receiving state-funded subsidies. As a result, practically all children in foster care and in adoptive placements are eligible for Medicaid. Others may be covered under private insurance available to their foster and adoptive parents.

CHIP acts as a complement to Medicaid to cover children in families that are low-income but not poor enough to be eligible for Medicaid. Children who are otherwise eligible for Medicaid, as are most children in foster care, or those who have other insurance coverage, are generally not eligible for CHIP. However, it is important for child advocates to determine exactly what coverage a child receives and to pursue basic or additional coverage as needed.

- If your child client is not covered by Medicaid for any reason, explore whether the child may be eligible for CHIP coverage.

Financial Considerations

The original SCHIP legislation was passed during a time of economic prosperity. In the current economic climate, it may be difficult for most states to take advantage of the opportunity to expand their CHIP programs in the near future, even with the increased federal funding. It is also likely that states faced with significant budget shortfalls may conduct fewer outreach efforts to find eligible but unenrolled children, or those efforts may be the first programs to face cuts. While CHIPRA provides financial incentives for states to increase CHIP enrollment, as well as a level of certainty in the amount of available federal funding, states will still need to use state as well as federal resources to respond to increased demand as family incomes decline and some parents lose employer-provided health insurance.

- Child advocates should ensure that the children they represent receive all the Medicaid and CHIP benefits for which they are eligible.

Eva J. Klain, JD, is director of child and adolescent health grants at the ABA Center on Children and the Law, Washington, DC.

Resources

- *Foster Care: State Practices for Assessing Health Needs, Facilitating Service Delivery, and Monitoring Children's Care.* GAO-09-26. Washington, D.C.: February 6, 2009. www.gao.gov
- Wachino, Victoria and Alice M. Weiss. *Maximizing Kids' Enrollment in Medicaid and SCHIP: What Works in Reaching, Enrolling and Retaining Eligible Children.* National Academy for State Health Policy and Robert Wood Johnson Foundation. February 2009. www.rwjf.org/coverage/product.jsp?id=38348

Raising Funds for Courts: Judges' Roles

by Jennifer Renne

You're a judge in a court that is trying to establish a family drug court to handle the growing number of child welfare cases involving parental substance abuse. You're asked to join a committee to raise funds for the court. Can you?

The ABA Standing Committee on Ethics and Professional Responsibility has issued a formal opinion on whether a judge may participate in fundraising activities on behalf of a court, particularly a "therapeutic" or "problem-solving" court such as a drug court.¹ Since the ABA Model Code of Judicial Conduct (MC) does not specifically address the issue, the opinion interprets the Model Code rules to conclude that a judge is not barred from fundraising for a specialty court, but identifies factors for judges to consider and limitations.

Model Code (MC) Rule 3.7 authorizes judges to participate in activities sponsored by organizations or governmental entities that administer justice. The Rule also establishes permissible and prohibited conduct. MC Rule 3.7:

- prohibits judges from direct fundraising for organizations or entities with a limited exception when they are the director of a nonprofit organization.²
- permits judges to solicit contributions for such organizations but only from the judge's family or others over whom the judge does not exercise supervisory authority.³
- permits judges to make a grant application in connection with court activities, but only if the organization from which the funding is being sought is "concerned with the law, the legal system, or the administration of justice."⁴

In addressing restrictions on a judge participating in indirect or direct fundraising, MC Rule 3.7 must also be considered in light of MC Rule 3.1, which addresses ethical considerations pertaining to extrajudicial activities. Fundraising activities raise three primary concerns:

1) Whether fundraising efforts will interfere substantially with performing judicial duties.⁵

This concern could arise because attorneys and parties appearing before the court may be recipients of the fundraising request, thus the judge's "independence, integrity, and impartiality" may be in question.⁶ The judge would then need to disqualify himself from hearing the case.⁷

2) Whether asking for funds would be an "abuse of discretion."

This concern is also grounded in MC Rule 1.3, which protects against judicial abuse of prestige to advance personal or economic interests of the judge or others. Neither the Rule nor the Commentary specifically address fundraising for a specialty court. Citing a state Judicial Ethics Advisory Committee opinion regarding a court-sponsored grant application to government and private entities, the ABA opinion concludes this is permissible only "when it is clear that no political or business profit-making interest is involved, and ... a judge must consider whether circumstances might suggest that individuals involved in the projects would obtain special influences before the judge."⁸ This is a concern when attorneys are directly solicited, as opposed to business people and the general public.

3) Whether fundraising activities for a specialty court create an appearance of impropriety.⁹

Comment 5 lays out the test for impropriety as whether the conduct would create a perception that the judge violated the Code, or engaged in conduct that reflects adversely on the judge's impartiality. The opinion notes that contributions for this purpose ordinarily would not be considered a significant personal benefit to the judge, but a judge would be "well-advised to take into account both the size and the importance of contributions ... made by lawyers or parties who come before her."¹⁰

The opinion concludes that when a judge is aware of and adheres to these and other provisions of the Judicial Code, the judge ensures that "fundraising efforts on behalf of special courts benefit the operation of those courts without raising concerns about the impartiality, independence, and integrity that must underlie all of the judge's activities."¹¹

*Jennifer Renne, JD, is an assistant director of child welfare for the National Child Welfare Resource Center on Legal and Judicial Issues. She wrote *Legal Ethics in Child Welfare Cases* and is a frequent trainer on ethics in child welfare.*

Endnotes

¹ ABA Formal Opinion 08-452, based upon The Model Code of Judicial Conduct as adopted by the ABA House of Delegates in February 2007.

² Model Code 3.7(A)(6) specifically allows a judge's name to be on the letterhead of the organization, but precludes the judge from signing a solicitation letter.

³ MC Rule 3.7(A)(2).

⁴ MC 3.7(A)(5).

⁵ MC Rule 3.1(A).

⁶ MC Rule 3.1(C).

⁷ MC Rule 3.1(B).

⁸ Arizona Supreme Court Judicial Ethics Advisory Committee Op. 97-01.

⁹ MC Rule 1.2.

¹⁰ ABA Formal Opinion 08-452.

¹¹ ABA Formal Opinion 08-452.

Recovery Coaches Lower Risk of Drug-Exposed Newborns

by Claire Chiamulera

What if a new mother struggling to overcome drug addiction had her own coach to help keep her on track to recovery? Recovery coaches have emerged to fill this role, intervening when a mother gives birth to a drug-exposed newborn and providing personalized advocacy to prevent the mother from repeating the pattern. They appear to be making a difference.

A University of Illinois study finds that mothers whose infants enter the child welfare system at birth because of exposure to drugs can benefit from recovery coaches. Recovery coaches help the mother access substance abuse services, perform assessments to identify underlying problems, advocate for available benefits and services, and assist with case coordination to ensure the mother meets child welfare and court requirements. Recovery coaches work with substance abusing families where they live and aid communication between child welfare workers and substance abuse treatment providers.

The Study

Beginning in April 2000, the researchers began studying women referred to the Cook County Illinois Juvenile Court Assessment Program for child maltreatment based on substance exposure of a newborn. The study sample included only those mothers with substantiated allegations of substance abuse exposure at birth. The sample included 931 mothers who were randomly assigned to a control or experimental group. The control group (261 mothers) received traditional substance abuse services, while the experimental group (670 mothers) received traditional substance abuse services and recovery coaches.

Characteristics of the mothers in the study sample were:

The mothers with recovery coaches were significantly less likely to have later substance-exposed births.

- Average age: 32
- Race: African American: 81%; Hispanic: 5%; White: 14%
- Employment: 86% unemployed
- Education: 36% high school graduates
- Public assistance: 42% received public aid
- Insurance: 55% lacked medical insurance
- Prior substance exposure at birth: 69% had given birth previously to a drug-exposed newborn

The researchers observed the mothers from the time they were referred to the juvenile court program for substantiated substance abuse of a newborn through December 2005. They watched to see if any of the mothers gave birth again to a substance-exposed child and whether recovery coaches decreased the risk of subsequent substance exposed births. They also identified the factors common among mothers with later substance-exposed births.

Key Findings

The mothers with recovery coaches were significantly less likely to have later substance-exposed births. These mothers had a 28% lower risk of later substance-exposed births than mothers in the control group (15% of the recovery coach group had a subsequent substance-exposed birth, compared to 21% of mothers in the control group). Recovery coaches also lowered the risk for mothers with histories of substance-exposed births before the study—the hardest group to reach.

In addition to the benefits of recovery coaches for mothers in reducing later drug-exposed births, the researchers found two other factors were linked to the likelihood of a later drug-exposed birth:

- *Younger caregivers* were more likely to have a subsequent drug-exposed newborn.
- *Female caregivers with prior drug-exposed births* were at greater risk of having a subsequent drug-exposed newborn.

The findings support using recovery coaches to reduce repeat substance-exposed births. They also add to the small body of research on the benefits of recovery coaches, which shows the model increases access to substance abuse services, increases the likelihood of achieving family reunification, and lowers placement costs by keeping mothers and children together.

Claire Chiamulera is CLP's editor.

This study, "Recovery Coaches and Substance Exposed Births: An Experiment in Child Welfare," by Joseph P. Ryan, et al. was published in the journal *Child Abuse & Neglect* 32, 2008, 1072-1079.



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